

OFFICE OF THE  
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STATE OF ALABAMA

88-00098

JAN 4 1988

Honorable Franklin J. Allen II  
Municipal Judge  
City of Boaz  
Boaz Municipal Court  
101 Line Avenue  
P. O. Box 537  
Boaz, AL 35957

Municipalities - Municipal  
Courts - Sentences

Upon dismissal by the circuit  
court of an appeal from  
municipal court, the municipal  
court is without authority to  
modify its previous sentence in  
any manner.

Dear Judge Franklin:

Your opinion request has been received in the Office of  
the Attorney General. Your questions are:

"1. If an appeal is dismissed in  
circuit court and remanded to the  
municipal court, does the municipal court  
have authority to modify its previous  
sentence imposing a jail sentence?

2. When a voluntary dismissal in  
circuit court is entered on a municipal  
appeal and the case remanded, does the  
municipal judge have authority to remit  
the fines and court costs previously  
ordered or place the defendant on  
probation?

3. If the voluntary dismissal was  
conditioned on an agreement made between  
the prosecutor and defendant in the  
circuit court, could a municipal judge  
modify his original sentence on remand to  
comply with the agreement?

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4. If the answer to questions number 1, 2, and 3 are negative, does the municipal court have authority to modify its sentence in any manner?"

In an opinion to Honorable R. Forrest Dobbins under date of September 12, 1980 (80-00553), this office stated:

"In the case of appeals from a municipal court for a trial de novo in the circuit court statutory provision is made to provide that in the case of a dismissal in the circuit court or failure of defendant to appear in the circuit court, a dismissal may be entered and defendant may be punished in accord with the judgment of the municipal court, Section 12-14-70, Code of Alabama 1975. The former statute authorized a similar procedure, see Title 37 Section 588, Code of Alabama recompiled 1958."

When an appeal is perfected, jurisdiction becomes vested exclusively in the circuit court. Kennedy v. Town of Oxford, 22 Ala.App.77, 112 So.813(1927). There is no statutory authority conferring jurisdiction once again upon the municipal court except as noted in the Dobbins opinion. Code of Alabama 1975, § 12-14-70(g) provides that upon receipt of notice of dismissal of appeal, the municipal court may issue a warrant for arrest of the defendant. Section 12-14-70(g) also provides that upon arrest, the defendant shall be delivered to the municipal authorities and punished in accordance with the judgment of the municipal court. There is no authority for modifying a previous sentence. In response to your first question, it is the opinion of this office that upon dismissal in circuit court and remand to the municipal court, the municipal court has no authority to modify a previous sentence. We are of the further opinion that the same response is applicable to your third question even if there was a purported agreement between the circuit court prosecutor and the defendant.

Your second question is whether, upon dismissal in circuit court, a municipal judge may remit fines and court costs previously ordered or place the defendant on probation. In addition to other authority cited in this opinion, in an opinion to Honorable Allen L. Tapley, Administrative Office of Courts, under date of June 11, 1980 (80-00395), this office stated:

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"In the instance of a voluntary dismissal by the defendant/appellant, the circuit court would make a final assessment of costs and collect from the defendant/appellant all unpaid court costs including its own cost bill plus that of the municipal court. The circuit court would then remit to the municipal court the municipal court costs so collected."

Under this authority and other authority previously cited, it is the opinion of this office that after dismissal in circuit court a municipal judge may not remit fines and court costs previously ordered or place the defendant on probation. In response to your final question, it is the opinion of this office that the municipal court is without authority to modify its sentence in any manner following dismissal of an appeal to circuit court.

I do hope that this response satisfactorily answers your questions. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By:



CAROL JEAN SMITH  
Assistant Attorney General

DS/CJS/jho